

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA)	
)	
vs.)	Criminal No. 04-176
)	
FREDERICK H. BANKS)	

ORDER

Defendant Frederick H. Banks ("Defendant") has filed a "Motion to Modify Sentence Pursuant to 18 USC § 3582(c)(2); and Motion for Evidentiary Hearing as to Any Geniune [sic] Issues of Material Facts; and Motion for Summary Judgment; and Statement of the Issues to be Decided in Motions," Docket No. 539 ("Motions.") In support of these Motions, he has also filed an affidavit with numerous exhibits in support thereof and a "Supplemental Memorandum in Support of Motion to Modify Sentence," Docket No. 540.

Briefly stated, the first Motion seeks to modify Defendant's term of imprisonment in light of retroactive amendments to the United States Sentencing Guidelines enacted after his sentencing which he alleges lowered the range of imprisonment applicable to him. (Motions at 3.) In the motion for an evidentiary hearing, Defendant argues such a hearing is warranted because "there will likely be geniune [sic] issues of material fact," but lists only seven "Material Facts as to which there is no genuine Issue." (Motions at 4.) The court is unable to identify the subject of Defendant's motion for summary judgment nor the "Statement of Issues to be Decided in Motions" either in the "Motions" themselves

or in the supporting affidavit.

According to Defendant, the amendments to the sentencing guidelines to which he refers are those made in 2007 (Motions at 3-4); otherwise, they are unidentified and unexplained. The United States Sentencing Commission, pursuant to its obligation to periodically review and revise previously promulgated sentencing guidelines, submitted proposed amendments to Congress on May 1, 2007, specifying an effective date of November 1, 2007. As published in the Federal Register on May 21, 2007 (72 Fed. Reg. 28558), the proposed amendments required almost 20 pages of text and related to some 12 different areas of the law. The court declines to hypothesize which of these amendments purportedly apply to Defendant's case.

Defendant's Motions are denied without prejudice. Before refiling any further pleadings on the topics therein, Defendant should carefully consider if his arguments are properly raised under 18 U.S.C. § 3582(c)(2) or under 28 U.S.C. § 2255.

January 4, 2008

/s/ Joy Flowers Conti

Joy Flowers Conti

United States District Judge

cc: Brendan T. Conway, Esq.
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